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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 MONSTER CABLE PRODUCTS, INC, a
9 California Corporation,

No C 10-5902 EMC

10 Plaintiff,

ORDER TO SHOW CAUSE

11 v

12 MIZCO INTERNATIONAL INC, a New
13 York Corporation; MIZCO, LLC, a
New Jersey limited liability
company,

14 Defendants.
15 _____/

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18 On December 27, 2010, plaintiff Monster Cable Products,
19 Inc filed a complaint against defendants Mizco International Inc
20 and Mizco, LLC alleging trademark infringement under 15 USC § 1114,
21 false designation of origin under 15 USC § 125(a) and unfair
22 competition under California Business and Professions Code § 17200,
23 et seq. Complaint at 4-6. Plaintiff alleges that it is the
24 exclusive owner of several common law and registered trademarks,
25 including the registered trademark "Monster" for headphone
26 products. Complaint at 3. Plaintiff alleges that defendants
27 infringed plaintiff's trademarks by advertising and offering to
28 sell to the public a headphone product bearing the mark "Monster

1 Buds." Id. Attached to the complaint is an advertisement that
2 plaintiff alleges was published by defendants and shows that
3 defendants intend to display their Monster Buds product at the
4 Consumer Electronics Show ("CES") in Las Vegas, Nevada in early
5 January 2011. Id.

6 On December 28, 2010, plaintiff filed an ex parte
7 application for a temporary restraining order. Plaintiff requests
8 an order preventing defendants from using, shipping, selling,
9 offering for sale, holding for sale, advertising or promoting its
10 Monster or Monster Buds headphone products. Proposed Order
11 Granting Plaintiff's Application For Temporary Restraining Order at
12 1. Plaintiff specifically requests that defendants be prevented
13 from selling or advertising their Monster Buds product at CES,
14 which begins on January 6, 2011. Id at 1-2. Plaintiff's
15 application was transferred to the undersigned in the absence of
16 the magistrate judge presiding over this case. A certificate of
17 service appears to satisfy Civil LR 65-1(b).

18 The showing required for a temporary restraining order
19 mirrors that required for a preliminary injunction. Stuhlbarg
20 Int'l Sales Co, Inc v John D Brush & Co, Inc, 240 F3d 832, 839 n7
21 (9th Cir 2001); Lockheed Missile & Space Co, Inc v Hughes Aircraft
22 Co, 887 F Supp 1320, 1323 (ND Cal 1995). Plaintiff "must establish
23 that [it] is likely to succeed on the merits, that [it] is likely
24 to suffer irreparable harm in the absence of preliminary relief,
25 that the balance of equities tips in [its] favor, and that an
26 injunction is in the public interest." Winter v National Resources
27 Defense Council, Inc, 555 US 7, 24-25 (2008). In lieu of
28 establishing that it is likely to succeed on the merits, plaintiff

1 may secure a temporary restraining order by raising "serious
2 questions going to the merits" and showing "the balance of
3 hardships tips sharply in their favor." Alliance for Wild Rockies
4 v Cottrell, 622 F3d 1045, 1049-1050 (9th Cir 2010).

5 This action was initially assigned to Magistrate Judge
6 Chen. The parties must consent to proceed before a magistrate
7 judge. 28 USC § 636; Civil Local Rule 73-1. It does not appear
8 that the parties have consented to have the instant application
9 heard by a magistrate judge. Therefore, on or before January 3,
10 2011 the parties shall advise the court whether they consent to
11 have plaintiff's application for a temporary restraining order
12 decided by Magistrate Judge Chen. If the parties so consent, this
13 order shall be returnable to Magistrate Judge Chen; if the parties
14 do not consent, this order shall be returnable to the undersigned.

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16 Now, therefore, defendants are ORDERED to SHOW CAUSE why
17 a temporary restraining order should not issue enjoining them from
18 using, shipping, selling, offering for sale, holding for sale,
19 advertising or promoting the Monster or Monster Buds headphone
20 products. Defendants shall file a written response to this order
21 to show cause and plaintiff's application for a temporary
22 restraining order on or before January 3, 2011.

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24 IT IS SO ORDERED.



25
26 VAUGHN R WALKER

27 United States District Chief Judge
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